

REMARKS

Claims 1-60 were pending in the application. Claims 30-37 and 55-58 were withdrawn from consideration. Claims 6, 9, 40, and 59-60 were cancelled. Claims 1, 3, 5, 7, 8, 10-15, 17-22, 24, 26-29, 38, 41, 47, 49 and 50 have been amended. Claims 61 and 62 have been added. Claims 1-5, 7, 8, 10-29, 38, 39, 41-54, and 61-62 are currently pending and under consideration in the present application.

Priority Claim:

The Examiner did not permit the present application to claim priority as a continuation-in-part to U.S. Patent Application 09/728,373 filed on November 28, 2000 (now U.S. Patent 6,493,131, issued December 10, 2002), which was a continuation-in-part to U.S. Patent Application 09/474,659 (now abandoned). In refusing the priority claim, the Examiner contends that none of the disclosures of the parent applications were sufficient to comply with the requirements of the first paragraph of 35 U.S.C. § 112 for pending claims 1-60. Applicant submits that the Examiner's refusal of the priority claim is in error for at least the following reasons.

MPEP 201.08 states the following in regard to continuation-in-part applications:

“Unless the filing date of the earlier nonprovisional application is actually needed, for example, in the case of an interference or to overcome a reference, there is no need for the Office to make a determination as to whether the requirement of 35 U.S.C. 120, that the earlier nonprovisional application discloses the invention of the second application in the manner provided by the first paragraph of 35 U.S.C. 112, is met and whether a substantial portion of all of the earlier nonprovisional application is repeated in the second application in a continuation-in-part situation. Accordingly, an alleged continuation-in-part application *should be permitted to claim the benefit of the filing date of an earlier nonprovisional application if the alleged continuation-in-part application complies with the following formal requirements of 35 U.S.C. 120:*

(A) The first application and the alleged continuation-in-part application were filed with at least one common inventor;

(B) The alleged continuation-in-part application was "filed before the patenting or abandonment of or termination of proceedings on the first application or an application similarly entitled to the benefit of the filing date of the first application"; and

(C) The alleged continuation-in-part application "contains or is amended to contain a specific reference to the earlier filed application." (The specific reference may be in an application data sheet. See 37 CFR 1.76.)" (Emphasis added).

The present application meets the requirements outlined by MPEP 201.08 stated above. More particularly, the present continuation-in-part: a) was filed with at least one common inventor with respect to both of the previous applications, b) was filed before the patenting or abandonment of an application entitled to the benefit of the filing date of the first application; and c) contains specific references to the earlier filed applications. Applicant further submits that there is no need for the Office to make a determination of priority at this time. Since the present application meets the conditions discussed in MPEP 201.08, Applicant respectfully requests the Examiner to permit the present application to claim the benefit of the earlier filed applications as noted.

Information Disclosure Statement:

The information disclosure statement filed on February 19, 2002, was noted as failing to comply with 37 CFR 1.98(a)(2). In the office action, the Examiner stated that the information documents that were readily available have been considered, while the other documents (as indicated by a lack of Examiner's initials on the Form PTO-1449 attached to the present office action) have not been considered. The undersigned is not presently in possession of the references indicated as not having been considered by the

Examiner, but will attempt to obtain copies of such references for submission in a supplemental information disclosure statement.

Objection to the Drawings:

The Examiner objected to the drawings. Applicant respectfully disagrees with the Examiner's objection regarding claim 5. Applicant submits that Fig. 22 illustrates an optical transmitter including a filter (filter 2215) for selecting one optical sideband from the optical signal. On page 43, lines 22-23, the specification states "Optical filter 2215 substantially attenuates the redundant sideband, and may further suppress the carrier, resulting in composite optical signal 2290." (Emphasis added). Thus, Applicant submits that the optical filter recited in claim 5 is illustrated in at least Fig. 22. Accordingly, Applicant respectfully requests removal of the objection to the drawings associated with claim 5.

With respect to the objection regarding claim 13, Applicant has amended Fig. 18A to show all of the features recited in the claim. Applicant submits that the amendment to Fig. 18A overcomes this objection, and thus its withdrawal is respectfully requested.

With respect to the objection regarding claims 7 and 24, Applicant directs the Examiner's attention to the amendments of these claims, and submits that the combinations of features recited therein are illustrated in Fig. 18C and discussed in the associated text in the specification. Accordingly, Applicant respectfully requests withdrawal of the objection to the drawings with regard to claims 7 and 24.

Applicant also notes that a set of formal drawings is submitted herewith. The replacement drawings attached hereto have been reformatted to meet formal drawing requirements. Applicant believes no changes that would constitute new matter have been made.

Objection to the Claims:

The Examiner objected to claims 18, 47, and 49. Applicant has amended these claims in accordance with the Examiner's suggestions, and thus submits that their respective objections have been overcome.

35 U.S.C. § 102 Rejections, § 103 Rejections, Allowable Subject Matter, and Patentability of the added claims:

The pending claims were subject to various rejections under 35 U.S.C. § 102 and § 103. With respect to the cancelled claims, Applicant believes the rejections to be moot.

The Examiner indicated that claims 9, 12-13, and 40-41 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has amended independent claim 1 to include the features of claim 9 (along with intervening claim 6). Thus claim 1 is believed allowable for at least the reasons stated by the Examiner. Similarly, independent claim 38 has been amended to include the features of claim 40, and is also believed allowable for at least the reasons stated by the Examiner. With respect to independent claims 22 and 50, Applicant has amended each of these claims to incorporate features recited in others ones of the claims deemed allowable by the Examiner, and therefore submits these claims are also in condition for allowance. Accordingly, Applicant respectfully requests removal of the rejections of independent claims 1, 22, 38, and 50 and their associated dependent claims.

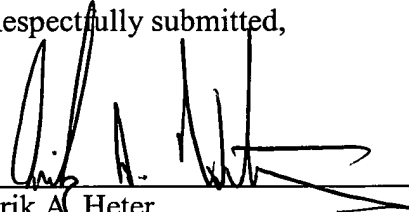
The present amendment adds new claims 61-62. Applicant submits that no new matter has been added and that claims 61-62 are fully supported in the specification. Applicant further notes that claim 61 recites a combination of features similar to original claims 1 and 12 (along with those recited in intervening claim 11), a combination that was deemed allowable by the Examiner in the office action. Claim 62 is dependent on claim 61, and recites a combination of features similar to original claim 13. Thus, for at least the reasons stated by the Examiner regarding the allowability of claims 12 and 13, Applicant submits that newly added claims 61 and 62 are also in condition for allowance.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5957-41702/EAH.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Erik A. Heter', is written over a horizontal line.

Erik A. Heter
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AGENT FOR APPLICANT(S)

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